

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN**

AVKO EDUCATIONAL RESEARCH  
FOUNDATION, a Michigan  
Corporation, and DONALD J.  
MCCABE, author,

Plaintiffs,

v.

THOMAS A. MORROW, an individual,  
WAVE 3 LEARNING, INC.; HOME  
SCHOOL HOLDINGS, INC., and HOME  
SCHOOL, INC;

Defendants.

Case No.: 1:11-cv-13381-TLL-CEB

Hon: Thomas L. Ludington

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**PLAINTIFFS' RESPONSE Defendant MORROW'S REPLY TO Plaintiffs'  
RESPONSE TO ORDER TO SHOW CAUSE WHY  
HOME SCHOOL HOLDINGS, INC or HOME SCHOOL, INC  
SHOULD NOT BE DISMISSED**

Plaintiffs did not give counsel permission to stipulate to the dismissal of Defendant Home School Holdings, Inc. (HSH) believing that they may still be a viable defendant. However, Plaintiffs have no problem dismissing Home School, Inc.

The law cited by Defendants Wave 3 Learning, LLC (W3L) and Thomas Morrow (TM) is infirm. In the first case, the Plaintiff had failed to appear at two scheduled Court dates. That set of facts is entirely inapplicable here. In *Zanke-Jodway v Capital Consultants, Inc, et.al*, No. 1:2008-cv-930, **2010** WL 520697 (W.D. Mich. Feb. 5, **2010**) (Maloney, C.J.). the court ordered a show cause because the *pro per* Plaintiffs had failed to respond to those specific Defendants Motion to Dismiss, among other . In the ultimate opinion on March 12, 2010, the court said,

In February **2010**, this court ordered the plaintiffs to show cause why part or all of their case should not be dismissed due to their prolonged, widespread failure to prosecute, as evinced by their failure to respond to about half a dozen timely-filed dispositive motions, failure to request more time for discovery pursuant to FED. R. CIV. P. 56(f), and failure even to seek a further extension of time in which to do any of the foregoing (even months after the motion response deadlines passed). See *Zanke-Jodway*, No. 1:2008-cv-930, **2010** WL 520697 (W.D. Mich. Feb. 5, **2010**) (Maloney, C.J.). The plaintiffs filed a detailed and emotionally compelling response to the order, but they failed to show cause for the extent and duration of their **failure to prosecute their case against those moving defendants**. Accordingly, earlier this month, this court dismissed plaintiffs' claims against eighteen defendants with prejudice, pursuant to FED. R. CIV. P. 41, for lack of prosecution[.] [Emphasis Added]

Home School Holdings, Inc has not filed any motions nor complained. In this issue, Defendant Morrow and Wave 3 Learning, LLC, has no standing to respond, not being threatened by the presence of lack thereof. It will not shorten the litigation, but, actually may lengthen and complicate the litigation.

There is no valid supporting law for the Court to *sua sponte* dismiss Defendant HSH over the objections of Plaintiffs as there is no harm in allowing them to remain as a Defendant. Counsel for Plaintiffs is trying to control costs and fees by not engaging in litigation that may not result in significant benefit.

Their dismissal will not change the length of the trial nor reduce the effort needed by the Court in this case in any significant manner or present. Any benefit to the Court would be scantily negligible. Entry of a default against HSH would solve the issue.

However, Home School, Inc. should be dismissed.

Dated: March 25, 2013

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#### **PROOF OF SERVICE**

Susan Payne Woodrow certifies that she served a copy of the above pleading and exhibits to all parties of record by ECF on March 25, 2013.

/s/ Susan Payne Woodrow  
Susan Payne Woodrow